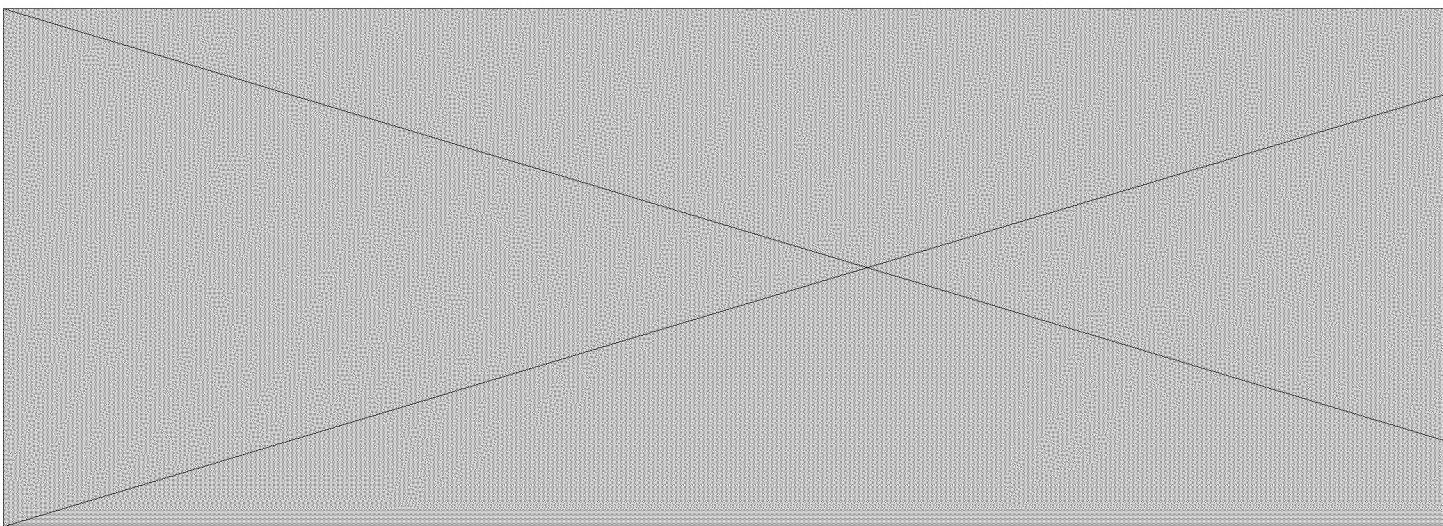
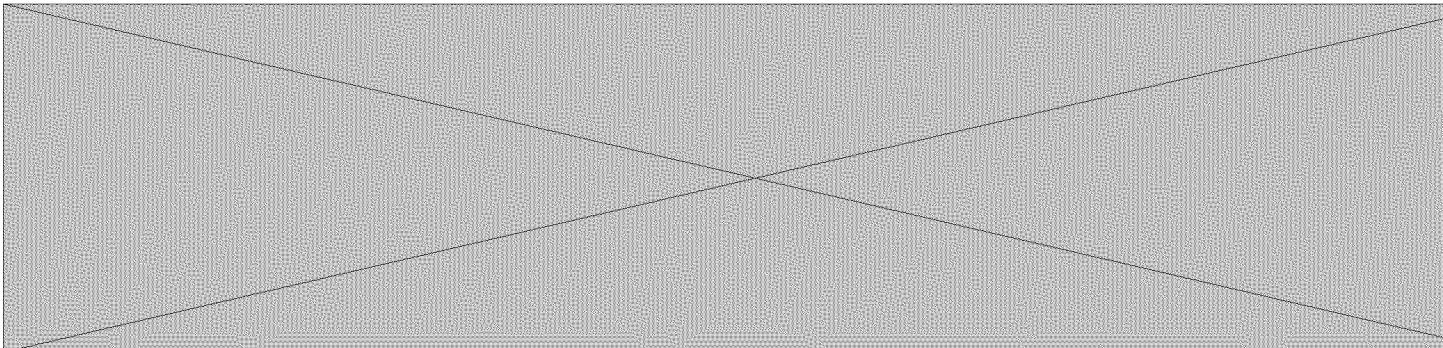


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Good Samaritans Mull New Prospects in Republican Congress

By Samantha Wright | Silverton

Back in late January, toward the end of a three-hour meeting of the Animas River Stakeholders Group, the group's co-coordinator Peter Butler floated an interesting, if perhaps farfetched proposal.

"There's a new Congress. The Senate's changed parties, so the committees have new chairs,"

he said. "We would like to take another run and see if we can get something done with Good Samaritan legislation."

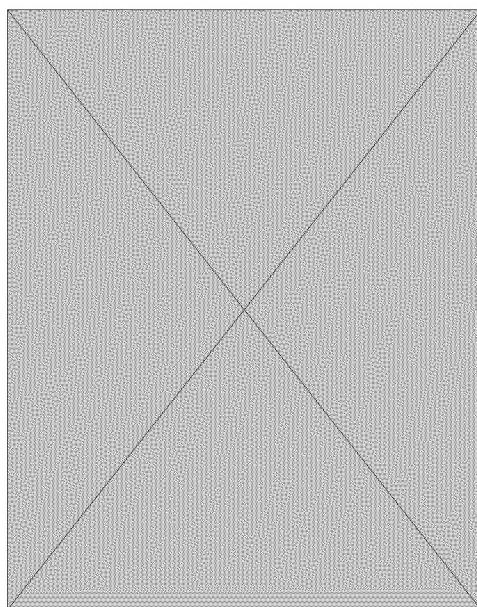
For years, ARSG – the loose-knit affiliation of mining companies, environmental organizations, land owners, and sundry local, state and federal governmental entities and agencies focused on improving the impaired headwaters of the Animas River – has participated in attempts to pass so-called Good Samaritan legislation.

If enacted, such legislation would make it easier for groups like ARSG to clean up toxic pollution from abandoned mines, by amending the federal Clean Water Act to indemnify the Good Samaritans from liability they would otherwise incur for treating polluted water without bringing it all the way up to CWA standards.

And for years, dating back to the 104th Congress, their efforts have ironically been thwarted in part by environmentalists who argue that waiving compliance with the Clean Water Act, for any reason, is a dangerous precedent that could result in letting big polluters off the hook.

Some of the biggest environmental groups in the country, such as the Washington, D.C.-based Clean Water Network and Oakland, Calif.-based EarthJustice, have lobbied powerful Democratic politicians in Washington (including California Democratic Senator Barbara Boxer who chaired the United States Senate Committee on Environment and Public Works from 2007 to early 2015) to thwart over a dozen Good Samaritan bills that have been introduced over the last 15 years, since the problem first became apparent.

"Barbara Boxer has been the whole roadblock for years," Butler said. "And she is no longer chair of the committee."



U.S. Sen. Jim Inhofe (R-Okla.)

With the recent changing of the guard in Washington, the Senate Committee on Environment and Public Works is now chaired by U.S. Sen. Jim Inhofe (R-Okla.), who was formerly its

chairman from 2003 to 2007, then retook the throne in January 2015. Inhofe himself sponsored Good Samaritan legislation on behalf of the Bush administration in the 109th Congress – parts of which were incorporated into another bill which passed committee but was never voted upon by the full Senate.

Having Inhofe back in charge “does change the dynamics, so we’ll see,” Butler said.

Over the years, Colorado’s federal legislators from both sides of the aisle have also championed Good Samaritan legislation. The former Sen. Mark Udall sponsored many a stymied Good Sam bill. In December 2012, together with Boxer and fellow Colorado Sen. Michael Bennet, Udall succeeded in pushing through a so-called procedural fix to the Good Samaritan problem. This “fix” bypassed the political land mine of opening up the Clean Water Act, and was achieved instead via a new policy issued by the Environmental Protection Agency that aims to give Good Samaritans additional legal liability protection by clarifying, among other things, that they are generally not responsible for obtaining a clean water permit during or after a successful clean-up.

However, Good Samaritan groups such as ARSG do not generally feel that the new EPA rules have sufficient teeth to protect them from Clean Water Act liability. For one thing, the regulations merely provide guidance, and do not come down in the form of rules or statutes.

Second, there is not much in the guidance to protect Good Samaritans from third party law suits stemming from the ‘citizen’s suit’ provision of the Clean Water Act. This provision says that if someone suspects a violation of the Clean Water Act, a citizen may begin a legal action and if successful, the defending party will have to pay all of the legal expenses of the citizen’s group. If they are unsuccessful, the defendant does not have recourse to counter-sue.

It’s the bugaboo that has always spooked potential Good Samaritans from taking action to directly treat point source discharge at abandoned mines. Good Sams have walked away from many mine cleanup projects for fear that if they don’t bring the discharge water all the way up to CWA standards, they may be sued by a third-party citizen or even another environmental group.

Thus, shovel-ready projects still languish, and up to 40 percent of headwaters across the West continue to be polluted by mine drainage.

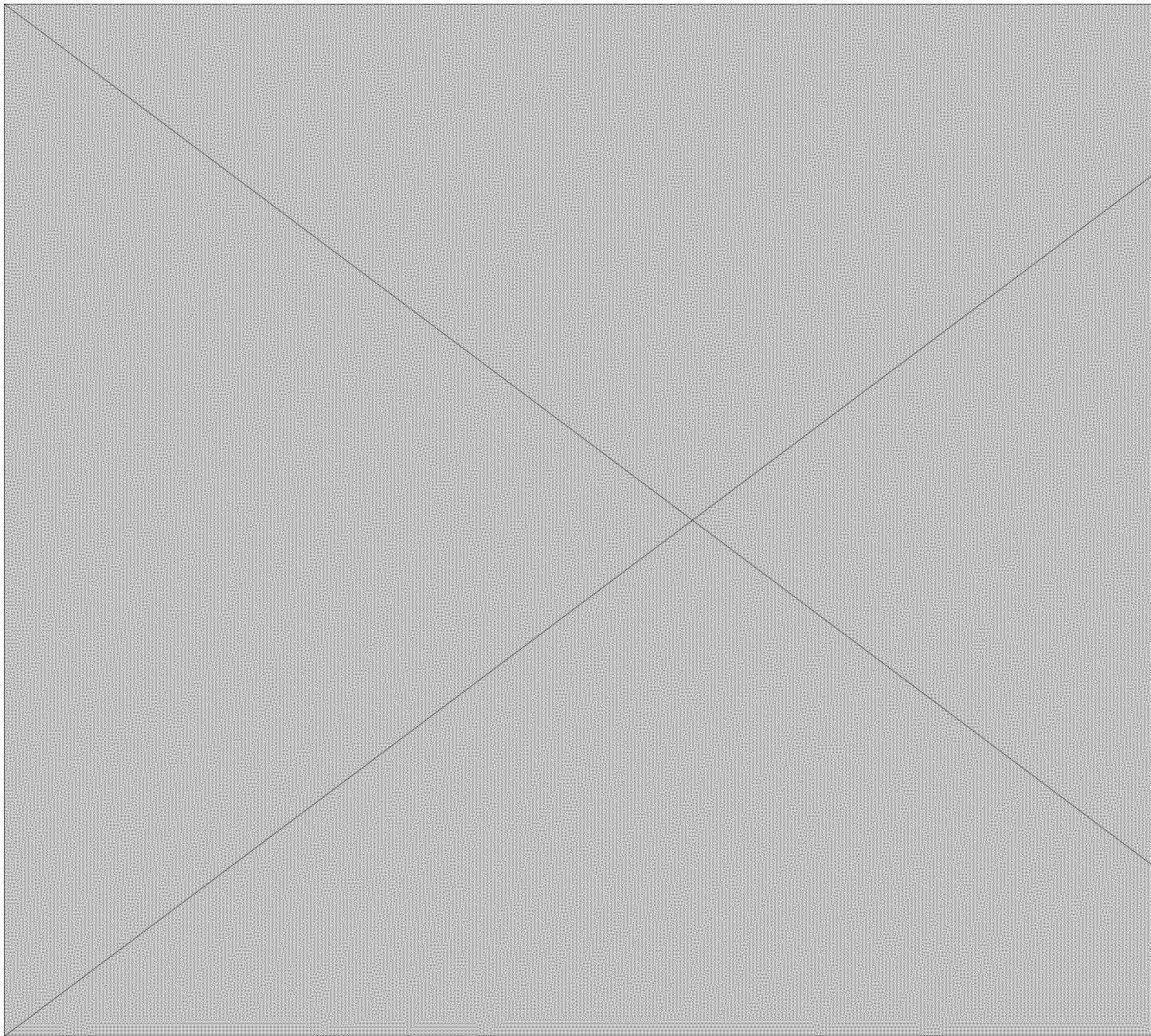
Seeking to solve this problem, during his tenure in the U.S. House, Republican Rep. Scott Tipton of Colorado has also championed the Good Samaritan cause. In 2013, he teamed with Udall to introduce legislation that would have created a new program under the Clean Water Act to help promote the Good Samaritan efforts of those who have no legal responsibility for abandoned hard rock mines.

The legislation never made it out of subcommittee.

With Udall now out of office, Tipton and Bennet (who co-sponsored the 2013 legislation) are now once again talking about Good Sam.

“It’s definitely on our radar screen. It’s something we would like to accomplish in this congress,” Tipton’s Southwestern Colorado Field Representative Darlene Marcus told the ARSG in January. But, she pointed out, the question is, “What can we do in this session that would be different than the last 14 attempts?”

Tipton himself, meeting with the Ouray County Commissioners in Ridgway last week, offered a glimpse of what that difference might be, as he discussed the concept of a Good Samaritan bill with a narrower scope that would support a pilot project of some sort.



U.S. Rep. Scott Tipton talked Good Sam with the Ouray County Commissioners (including Commission Chair Don Batchelder, at right) at a meeting in Ridgway on Thursday, March 12.
(Photo by Samantha Wright)

With “big-fix” Good Samaritan legislation hitting the same roadblock “over and over and over again,” Tipton said he thinks there may be more buy-in among his colleagues on the Hill for a

small-scale approach, and added that he would welcome local input as he moves toward crafting such legislation.

The Animas River watershed has twice been a candidate for such a pilot project in the past, with legislation introduced in turn by former Colorado Reps. Scott McInnis and John Salazar.

One of the problems with launching a new round of pilot project legislation would be narrowing down its scope. "There's a lot of people who would like to be part of a pilot project," Butler said. "Clear Creek would be interested. Summit County would be interested – they've got the Pennsylvania mine... It's very hard to create a pilot project that wouldn't cover most of Colorado."

As if to underscore this fact, at last week's meeting with Tipton, Ouray County Commissioner Lynn Padgett urged him to consider "criteria-based legislation" this time around, rather than something that is hemmed in by geographic boundaries or confined to a particular watershed.

"There are a lot of potential areas in your district that would benefit from a criteria-based Good Samaritan pilot project," she said. "I just really hope it includes the places that can benefit the most, and that may not be one little river in one watershed."



The long-abandoned Red & Bonita Mine near Silverton in the upper Cement Creek drainage is a poster child for the Good Samaritan cause. The U.S. Environmental Protection Agency will install a bulkhead inside the mine this summer to help staunch the flow of metal-laden water pouring out of its adit which eventually makes its way into the Animas River. (Photo by Samantha Wright)

Tipton wouldn't speculate whether he thinks Good Samaritan legislation has a better or worse chance with a Republican-controlled congress. "It's always a mystery, moving anything through," he said, reflecting on the relative ease with which his Small Hydroelectric Jobs Act was signed into law last year.

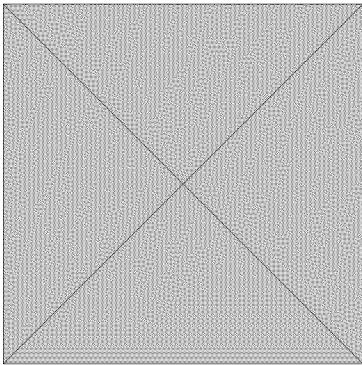
The merits of Good Samaritan legislation are just as straightforward as small hydro legislation, he said. "If we want to have actual cleanup, let's not penalize people that are trying to do the right thing."

Regional directors for both Bennet and Tipton met with ARSG members in Durango last month to strategize how best to move forward with a fresh batch of Good Samaritan legislation.

"There is certainly interest in doing it, with the current dynamics in congress," Butler said after that meeting.

Bennet's office was a little more qualified in its enthusiasm. "Although there is a new congress, the dysfunction in Washington seems to have stuck around," said Bennet's deputy press secretary Erin McCann. "Any bill is difficult to pass these days, but it's not impossible. We'll continue to fight to get it passed."

About the Author



Samantha Wright

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Samantha Tisdel Wright writes and raises two red-headed children in the San Juan Mountains of southwestern Colorado, dividing her time between Silverton and Ouray. She has worked as a reporter and editor for a variety of publications throughout the region, and is proud to be a founding member of the San Juan Independent. samantha@sjindependent.org



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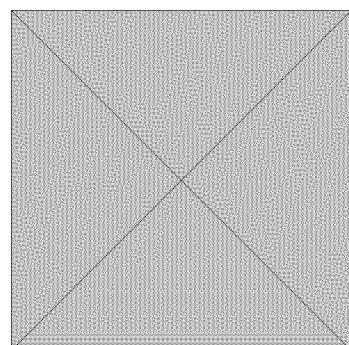
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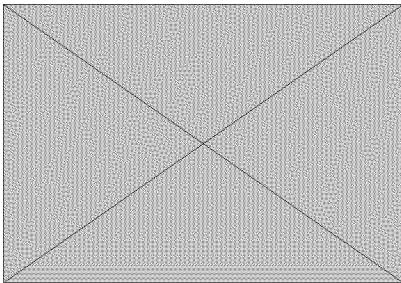
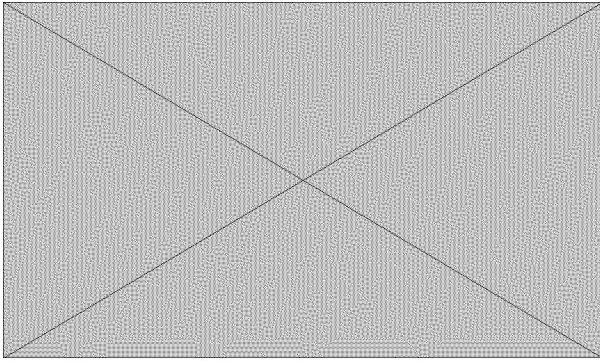


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